

Appl. No. 10/787,266
Docket No. AA-615M2
Amdt. dated August 28, 2009
Reply to Office Action mailed on May 28, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 1-9 and 11-15 are pending in the present application. No additional claims fee is believed to be due.

Claims 9-10 are cancelled without prejudice.

Rejection Under 35 USC §103(a) Over U.S. 5,075,026 (Loth) In View Of U.S. 6,612,468 to Pritchett et al. ("Pritchett"), and Together in View of U.S. 5,679,630 to Baeck et al. ("Baeck"); and U.S. 6,114,298 to Petri et al. ("Petri") In View Of Pritchett.

Claims 1-8 and 11-15 are rejected under 35 USC §103(a) as being unpatentable over Loth in view of Pritchett. The Office Action asserts that Applicants' previously submitted arguments with respect to the claimed location of their mesh and/or sponge are insufficient to overcome the present rejection. Specifically, the Office Action asserts that the meshes at the top end and bottom end of the tube (11) of Pritchett are located at the top of the foamer unit housing, containing a nozzle. Therefore, the Office Action concludes that the mesh is disclosed as being positioned within the interior passage of the nozzle. Applicants respectfully traverse this rejection.

The Office Action recognizes that Pritchett teaches both a nozzle (12) and an inner axial downwardly open tube (11). The Office Action further notes that Pritchett teaches a mesh located in the tube (11), but then concludes that the mesh in the tube (11) is equivalent to a teaching of a mesh located in the nozzle (12). Nothing in Pritchett teaches interchangeability or equivalence of the tube (11) and the nozzle (12). Therefore, the Office Action has failed to demonstrate that Pritchett teaches or suggests a mesh located "slightly within" the nozzle as asserted.

Pritchett, and its combination with the remaining cited references, fail to teach or suggest such a feature. As noted by Applicants, it has been found that additional meshes and/or a sponge located slightly within, and/or at the tip of the nozzle are especially useful herein, as they serve to generate the foam immediately prior to dispensing. *See the written description* at page 6, lines 10-13. As this, nor any other benefit, is recognized in the art regarding placement of a mesh or sponge, it is believed that the claims are nonobvious over the combination of Pritchett with the remaining cited references. Accordingly, Applicants respectfully request that the present rejection be withdrawn.

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Double Patenting Rejection Over U.S. Patent No. 7,402,554

Claims 1-2 and 11-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 and 9 of U.S. Patent No. 7,402,554.

As a result, a properly executed terminal disclaimer in compliance with 37 C.F.R. 3.73(b) is submitted herewith. Therefore, it is believed that any obviousness-type double patenting rejection of the claims of the present application has been obviated.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested. Applicants' attorney invites the Examiner to contact him with any questions the Examiner may have regarding this application.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-8 and 11-15 is respectfully requested.

Respectfully submitted,

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